about the engine. The engine had been in operation some two weeks or more, and after the accident was operated with the same valve for several months without dangerous results. *Held*, by *Day*, C. J., that the court below properly directed a verdict for the defendant, on the ground "that the proof was insufficient to show that the engine equipped with such a valve, was *imminently dangerous*, so as to render defendant liable for intestate's death." *Marquardt* v. *Ball Engine Co.* (1903), 122 Fed. Rep. 374.

The court relies upon *Savings Bank* v. *Ward*, 100 U. S. 195, 25 L. ed. 621; *Losee* v. *Clute*, 51 N. Y. 494, 10 Am. R. 638; *Bragdon* v. *Perkins Campbell Co.*, 87 Fed. R. 109, 30 C. C. A. 567, and distinguishes *Thomas* v. *Winchester supra*, and considers the statement of the rule by the Master of the Rolls in *Heaven* v. *Pender*, 11 Q. B. Div. 503, to be incorrect.

Neither of the courts in the foregoing cases enters into a discussion of principles and authorities with anything like the fulness of the decision of *Huset* v. *Case Threshing Machine Co.*, (C. C. A.) 120 Fed. 865, 2 MICHIGAN LAW REVIEW, 151, though they apply the rules there set forth.

A valuable discussion of the principles involved in such cases is to be found in Mr. C. B. Labbatt's article "*Negligence in Relation to Priority of Contract*," in 16 *Law Quarterly Review*, p. 168.

TORTS—DEATH BY WRONGFUL ACT—RIGHT OF A POSTHUMOUS CHILD TO SUE.—A statute of California provides that an action for death by wrongful act may be brought by either the heirs or the personal representatives of the deceased. A widow, suing as heir, recovered judgment for the wrongful killing of her husband. *Held*, judgment was a bar to a subsequent action for the same wrong, brought by a child who was afterward born to her, but who, at the time of the judgment, was en ventre sa mere. *Daubert* v. *Western Meat Co.* (1903), — Cal. —, 73 Pac. Rep. 244.

The majority of the court, in rendering this decision, seem to have been influenced more by the apparent hardship to the defendant in having to respond to two judgments for the same wrong, than by the logic of the case. A California statute provides that a child en ventre sa mere shall be considered as *in esse* whenever such a supposition would be for its benefit. Beatty, C. J., in a dissenting opinion, points out that, logically, the decision of the majority would deny an action to a child in being where, without fraud or laches, he should fail to join with his mother in a former suit. He further maintains that the fraud of the mother in concealing the fact that there was another heir legally in existence, should not be imputed to the child, but that, if any damage was occasioned thereby, she should respond to the defendant therefor. A case very similar in its facts came before the Supreme Court of Texas, and it was held, in the absence of a statute declaring a child en ventre sa mere, to be legally in existence, that a recovery by the mother would not bar an action by the child. *Nelson* v. *Galveston H. & S. A. Ry. Co.*, 78 Tex. 621, 14 S, W. Rep. 1021, 11 L. R. A. 391, 22 Am. St. Rep. 81. The late case of *Galveston, H. & S, A. Ry. Co.* v. *Contreras* (1903), — Tex. Civ. App. —, 72 S. W, Rep. 1051, is to the same effect.

TORTS—WIFE'S RIGHT OF ACTION FOR ALIENATION OF HUSBAND'S AFFECTIONS.—Plaintiff alleges that through the enticement and influence of defendant the love and affection of her husband for her have been destroyed; that he has deserted her; and that she has suffered greatly from the loss of his society and support. On demurrer to the declaration, *Held*, such an action could not be maintained. *Hodge* v. *Wetzler* (1903), — N. J. L. —, 55 Atl. Rep. 49.